In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-388

MARILYN LOUISE CASEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the Southern District of California, petitioner was convicted on two counts charging possession of 515 grams of heroin and 24 grams of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). Petitioner was sentenced to the maximum period authorized by law and for a study as described in 18 U.S.C. 4208(c), with the sentence subject to modification pursuant to 18 U.S.C. 4208(b). The court of appeals affirmed (Pet. App. ii). Petitioner here contends that her warrantless arrest and the search of her purse made incident to that arrest violated the Fourth Amendment.

The evidence, which is not in dispute, showed that in January 1972 Customs Agent Henry H. Washington, stationed in San Luis, Arizona, received information that Moses Casey was operating a large narcotics business in Anchorage, Alaska that involved the use of both male and female couriers to obtain drugs in Yuma, Arizona, and to transport them either to Anchorage or to Detroit, Michigan

(Tr. 37-38).[1] In ensuing months, Washington was advised by a narcotics agent in Anchorage that Casey kept a Cadillac automobile in Fontana, California, and that Casey would come to Yuma personally to make a narcotics purchase but would transport the narcotics via couriers (Tr. 38). Another San Luis customs agent, John Wilson, was given a description of the Cadillac and the number of its Alaska license plate. He forwarded this information to local narcotics agents in Yuma (Tr. 3-4).

On June 13, 1973, a reliable confidential informant notified Wilson that a white female and a black male had come to Yuma to purchase narcotics, were registered in Room 433 of the Stardust Motel in Yuma, and had been using the Cadillac previously identified as belonging to Moses Casey. A surveillance of the motel was commenced at 3:10 p.m. by federal and local agents. Petitioner (a white female), and Moses Casey and Casey's brother Louis (black males), were observed leaving from Room 433 (Tr. 16-17). Petitioner left the motel in a taxicab (Tr. 11). Moses and Louis Casey went to the Cadillac, which they drove to the front of the motel. There, Moses Casey left the car to pay the bill for Room 433. He then returned to the vehicle and drove off toward California. The car was searched at a California inspection station, but no narcotics were discovered (Tr. 11). At the inspection station a local narcotics agent, Richard Stallworth, asked the brothers about the woman who had been with them in Yuma. Initially, Louis denied being with a woman in Yuma and Moses remained silent. However, after further interrogation they both admitted that a woman had been with them, but they claimed that they did know where she had gone (*ibid.*).

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[1] "Tr." refers to the transcript of the hearing on the motion to suppress, a copy of which is being lodged with the Clerk of this Court.

Further investigation by Agents Washington and Stallworth disclosed that petitioner had flown to Yuma on the previous day and that she had rented an automobile at the airport, giving the rental agency two addresses, one in Fontana, California, and another in Anchorage, Alaska (Tr. 12, 39-40). Although hired for but one day, the rental vehicle had 336 additional miles on the speedometer when returned (Tr. 20). The agents also learned that, on leaving the motel, petitioner had taken a taxicab to a bus depot and had purchased a ticket for a trip to San Bernadino, California (Tr. 19-20). Agent Washington notified Customs Agent John D. Fernandez in Calexico, California, of petitioner's physical description and advised Fernandez that petitioner, whom he believed to be carrying narcotics, should be investigated when the bus arrived there. Fernandez and Agent John Pulley proceeded to the bus stop, where they met the bus and removed petitioner from it. Pulley advised petitioner of her constitutional rights. Fernandez asked petitioner what she had in her purse. Petitioner replied that she had a package. Asked if it contained heroin, petitioner replied "Yes" (Tr. 24-25). Fernandez then examined the purse and removed the package (Tr. 25).

There is no merit to petitioner's claim that probable cause for her arrest and the accompanying search of her purse was lacking. Prior to confronting her, several law enforcement agents had acquired a substantial amount of information regarding the routine employed by Moses Casey to obtain narcotics in the Yuma area. They knew that he used "mules" (Tr. 42) who, after the narcotics were obtained, would take possession of the drugs and travel with them, apart from Casey, to the intended destination. The agents' knowledge that Moses Casey had come to Yuma in search of narcotics and was staying with petitioner, coupled with

their observation that petitioner traveled separately to California while Moses Casey and his brother drove back without narcotics, afforded them ample cause to believe that petitioner was serving as Moses Casey's courier. This belief was reinforced by the equivocal responses given by Louis Casey regarding petitioner's presence with them at the motel. The agents who actually arrested petitioner were not required to know all of the underlying facts that constituted probable cause, since they were acting as part of a joint law enforcement enterprise. See *United States* v. *Robinson,* 457 F.2d 1304 (C.A. 5), certiorari denied, 409 U.S. 863; *United States* v. *McKenzie,* 446 F.2d 949 (C.A. 6). When Agents Fernandez and Pulley located petitioner on the bus, they lawfully arrested her. The search of her purse was incident to that lawful arrest. *Draper* v. *United States,* 358 U.S. 307.

Moreover, petitioner's purse was not searched until after she had been warned of her rights and had admitted that the purse contained a package of drugs. Her voluntary admission provided ample probable cause for the subsequent search and seizure. *United States* v. *Cox,* 459 F.2d 986 (C.A. 5).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[2]Petitioner incorrectly suggests (Pet. 8-9) that the decision of the court of appeals in the instant case conflicts with *United States* v. *Mitchell,* 425 F. 2d 1343 (C.A. 8), certiorari denied, 400 U.S. 853. The court of appeals in *Mitchell* also reversed a district court's suppression order. Nothing in *Mitchell* supports petitioner's contention that the courts of appeals differ in applying the standard of probable cause.